IN THE COUNTY COURT OF VICTORIA

Revised
Not Restricted
Suitable for Publication

AT MELBOURNE
CRIMINAL JURISDICTION

CR 18-00364

DIRECTOR OF PUBLIC PROSECUTIONS

v

BRANDON SCICLUNA

JUDGE:	HIS HONOUR JUDGE WRAIGHT
WHERE HELD:	Melbourne
DATE OF HEARING:	6 December 2018
DATE OF SENTENCE:	24 January 2019
CASE MAY BE CITED AS:	DPP v Scicluna
MEDIUM NEUTRAL CITATION:	[2019] VCC 30

REASONS FOR SENTENCE

Subject: Criminal Law - Sentence

Catchwords: Guilty plea – six charges of attempting to obtain a financial advantage by deception – five charges of obtaining property by deception – six charges of obtaining a financial advantage by deception – three charges of attempting to obtain property by deception – one charge of possession of a drug of dependence – two related summary charges – youthful offender – whether *Verdins* principles apply

Legislation Cited: *Crimes Act* 1958 (Vic), *Drugs, Poisons and Controlled Substances Act* 1981 (Vic), *Summary Offences Act* 1966 (Vic), *Bail Act* 1977 (Vic), *Sentencing Act* 1991(Vic)

Sentence: Combination sentence pursuant to s 44 of the *Sentencing Act* 1991 – Total

effective sentence of 7 months imprisonment as the prison component – Community correction order for a period of two years, 250 hours community work, supervision, assessment and treatment for drug abuse or dependency

---

APPEARANCES:	Counsel	Solicitors
For the Director of Public Prosecutions	Mr J Singh	OPP
For the Accused	Mr R Melasecca	Melasecca, Kelly & Zayler

HIS HONOUR:

Introduction

1 Brandon Tony Scicluna, you have pleaded guilty to the following charges:

- Six charges of attempting to obtain a financial advantage by deception contrary to ss 321M and 82(1) of the *Crimes Act* 1958, which carries a maximum penalty of 5 years imprisonment on each charge (Charges 1, 3, 6, 11, 12 and 16);
- Five charges of obtaining property by deception contrary to s 81(1) of the *Crimes Act* 1958, which carries a maximum penalty of 10 years imprisonment on each charge (Charges 2, 5, 8, 10, and 15);
- Six charges of obtaining a financial advantage by deception contrary to s 82(1) of the *Crimes Act* 1958, which carries a maximum penalty of 10 years imprisonment on each charge (Charges 4, 7, 9 and 14);

- Three charges of attempting to obtain property by deception contrary to ss 321M and 81(1) of the *Crimes Act* 1958, which carries a maximum penalty of 5 years imprisonment on each charge (Charges 13, 17, and 18); and

- One charge of possession of a drug of dependence contrary to ss 73(1) of the *Drugs, Poisons and Controlled Substances Act* 1981 which carries a maximum penalty of 12 months imprisonment or 30 penalty units (Charge 19).

2 You have also pleaded guilty to two related summary charges:

- Charge 1 – making a false report to police contrary to s 53(1) of the *Summary Offences Act* 1966, which carries a maximum penalty of 12 months imprisonment or 120 penalty units; and

- Charge 23 - committing an indictable offence while on bail contrary to s 30B of the *Bail Act* 1977 which carries a maximum penalty of 3 months imprisonment or 30 penalty units.

3 You have also admitted your prior criminal record.

Circumstances of the offending

4 A summary of prosecution opening was tendered on the plea and may be summarised as follows:

5 On 2 May 2016, you Brandon Scicluna commenced a Home and Contents insurance policy with RACV Insurance in relation to your then residential address in Wallan.

6 On 27 November 2016, you contacted Wallan Police Station and reported that a burglary had occurred in the garage of your home. You stated that the burglary had occurred between 9pm the previous night and 10am that morning. You stated that a number of power tools were stolen to the value of $13,000, including Ryobi power saws, an angle grinder and nailer.

7 That same day police crime scene officer Senior Constable O'Brien attended at your residence and photographed the garage area. Damage was noted to the garage door and doorframe. Police commenced an investigation.

8 On 29 November 2016, you contacted RACV Insurance and lodged a claim for the alleged burglary. You falsely advised RACV Insurance that $50,000 worth of tools, tool boxes and a car computer had been stolen. This amount was in excess of your insurance coverage. You provided RACV with two photographs of the allegedly stolen property in support of proof of the loss (Charge 1).

9 On 11 January 2017, you emailed police officer Senior Constable Davidge a list of items alleged to have been stolen.

10 RACV Insurance also commenced an investigation through Quantum Corp. On 12 January 2017, RACV investigator Andrea Chambers attended at your residential address and conducted a recorded interview with you. During an inspection of the house, she observed and photographed contents of a black plastic container in a cupboard that contained Ryobi power tools identical to those pictured in the photographs sent by you to RACV.

11 Later that day Ms Chambers used a metadata viewer to examine a further five images of the allegedly stolen property sent to her by you. This revealed that the photographs had actually been taken variously at midnight on 26 November and 22 December 2016.

12 On 16 January 2017, you contacted RACV wanting to withdraw your claim. This was refused.

13 On 31 July 2017, police searched your new residential address in Meadow Heights and located the Ryobi tools.

14 On 5 January 2017, you contacted MasterCraft Melbourne Boat Company by mobile phone and spoke to the owner Jacob Mutton. You expressed an interest in

purchasing a 2017 MasterCraft XT23 boat which came with a tandem accent axle trailer.

15 The following day 6 January 2017, you attended at Torrumbarry Weir Holiday Park located at Weir Road, Echuca and met Mr Mutton there. Mr Mutton had the MasterCraft XT23 in the lake and took you for a test drive. You agreed to purchase the boat for $149,000.

16 You insisted on taking the boat there and then. You purported to make two EFTPOS bank transfers to Mr Mutton using a Commonwealth Bank application on your mobile phone. The first was for $100,000 and the second was for $49,000. You set up the transfers to occur on 7 January 2017. You made screenshots of the transfers and texted them to Mr Mutton. Mr Mutton did not realise the transfers were set up to occur the next day. At the time of the transactions you had a balance of $199.89 in your Commonwealth Bank account (Charge 2).

17 At about 1pm the same day you contacted RACV Insurance and commenced a boat insurance policy for an agreed value of $149,000.

18 About an hour later at 2pm you took possession of the MasterCraft boat from Mr Mutton. Subsequently at about 3.30pm, Mr Mutton realised the transfers had been set up to occur on 7 January. The money was never transferred. On 9 January, Mr Mutton called you asking where the transferred money was. You replied that the bank had lost your money and that you had lodged an insurance claim through your business.

19 At about 10am on 9 January 2017, you contacted RACV Insurance and lodged a claim for the MasterCraft boat in the amount of the agreed value of $149,000. You falsely stated that you had taken the boat out that morning and upon returning at about 8am the boat had struck a rock near Altona, the boat had sunk and had not been recovered (Charge 3).

20 Later that same afternoon at about 3.47pm, you contacted Mr Mutton sending him a photograph of a crack on the deck asking if it was covered by warranty. The next day, 10 January, Mr Mutton contacted you and made up a story that the boat needed to come in for a service. He asked if he and his father John Mutton could collect the boat and start the service, returning it by the weekend. You confirmed your address.

21 Jacob and John Mutton attended the address and collected the boat. Mr Mutton noted that the boat had sustained minor damage to the prop and trailer, but no damage to the hull, or signs that the boat had sunk underwater.

22 On 11 January, you contacted Mr Mutton to ask where the boat was. Mr Mutton told you that you were not getting it back until the money was paid.

23 On 16 January, the RACV contacted Mr Mutton about the boat and he told them the details. Mr Mutton texted you and said that the insurance company are sending the cops to your workplace. You contacted RACV Insurance and attempted to withdraw your claim for the boat, at the same time as your claim for the home and contents. Both requests were denied.

24 On 11 May 2017, you offered a Kawasaki jet ski for sale on Gumtree. Jake Carrigg responded to the advertisement and attended your residence where he purchased the jet ski. Mr Carrigg provided you with a photograph of his marine licence in order to transfer the registration.

25 On 15 May 2017, you contacted Harley Heaven by email and falsely identified yourself as Jake Scicluna. You requested to purchase a Harley Davidson VROD motorcycle. Staff member Steve Shirgwin contacted you and you agreed to purchase a black 2014 Harley Davidson motorcycle for the amount of $23,459.20. The purchase was entered into the system.

26 You then contacted Cameron Bacon of Yes Finance who submitted an online application for finance to purchase the Harley Davidson valued at $23,459.20,

through Pepper Money Pty Ltd. You falsely provided your name as Jake Carrigg, provided a false driver's licence number and gave your address. As part of the application process you supplied a copy of Jake Carrigg's marine licence and two false payslips in the name of Jake Carrigg. Pepper Money Finance approved the finance application in the amount $23,500 and the funds were paid to Harley Heaven on 16 May (Charge 5).

27 Harley Heaven employee Steve Shirgwin then arranged for the purchase of the motorcycle. You provided Mr Shirgwin with a letter of consent purporting to be from Jake Carrigg authorising Harley Heaven to transfer the registration into the name of Brandon Scicluna and allowing you to collect the Harley Davidson from Harley Heaven (Charge 4).

28 At about 2pm on 18 May 2017, you attended at Harley Heaven and collected the motorcycle. You provided your own driver's licence as identification.

29 On 31 July 2017, police searched your Meadow Heights residence and located the Harley Davidson motorcycle.

30 On 18 June 2017, you contacted Michael MacKenzie via email in regards to a boat for sale. You stated you would send a $5000 holding deposit. You asked Mr MacKenzie to send you his bank details and a photograph of his licence, so that you would know to whom you were transferring the money.

31 Mr MacKenzie emailed you his bank details, a photograph of his Victorian Marine licence and Victorian Heavy Duty licence. You did not send through the $5000 deposit and the sale did not proceed. Michael MacKenzie then left the country, returning on 24 July 2017.

32 On 28 June 2017, you created an email address in the name of Michael MacKenzie with an incorrectly spelt email address.

33 On 28 June 2017, you contacted Cameron Bacon of Yes Finance. Mr Bacon submitted an online application on your behalf, for finance to purchase a Jeep Cherokee valued at $77,453 through Pepper Money Pty Ltd. As part of the application you falsely provided your details as Michael MacKenzie of 21 Meridian Drive, South Morang (Charge 6).

34 Pepper Money rejected the application as no supporting identification or documentation had been provided in support of the application.

35 On 1 July 2017, you contacted Paul Wakeling Motor Group via an enquiry from Car Sales using the name Brandon. The sales representative Nadine Hyslop contacted you on your mobile phone. You said you were enquiring about a black 2014 Holden HSV GTS Sedan, New South Wales registration YDB 01R. You falsely stated it was on behalf of your father Michael MacKenzie and that the vehicle would be purchased by your business “Mick Mach Pty Ltd”. You agreed to purchase the Holden Sedan for $75,000 (Charge 8).

36 You originally stated that you would obtain your own financing, before being referred to Macquarie Leasing for finance.

37 You contacted Macquarie Leasing and falsely identified yourself as Michael MacKenzie. You made an application for finance for the Holden HSV GTS sedan for $75,000 in the business name of Mick Mach Pty Ltd. You falsely provided your details as Michael MacKenzie of 21 Meridian Drive, South Moran with the email address you had created in Mr Mackenzie’s name. You provided your own work mobile phone number. You supplied a copy of MacKenzie's marine licence and signed the application in the name of Michael MacKenzie. Macquarie Leasing approved finance in the amount of $77,715 (including fees) and paid the amount into your Commonwealth Bank account (Charge 7).

38 The purchase of the black Holden then went ahead. Using the name Michael MacKenzie, you arranged for the vehicle to be collected by car courier. On

3 July 2017 the courier collected the vehicle from Paul Wakeling Motor Group and met you at a BP service station on the Hume Highway after midnight. You purported to be Michael MacKenzie's son and took possession of the Holden.

39 On 31 July 2017, police searched your Meadow Heights residence and located documentation and keys for the Holden GTS. The vehicle was ultimately located on 1 August 2017 at Molnor Engineering in Preston, where it had been sent for repairs by you after you smashed it.

40 On 4 July 2017, you contacted Robert Houghton of Highway Performance Bikes and falsely identified yourself as Michael MacKenzie. You agreed to purchase a KTM 300 EXC motorcycle for $17,200. You falsely provided your details as Michael MacKenzie, together with his address and the email address you had created. You provided your own work mobile phone number. You provided a copy of a heavy vehicle licence in the name of Michael MacKenzie (Charge 10).

41 You were referred to United Financial Services and made an application for finance in the amount of $17,200. You falsely provided your details as Michael MacKenzie together with his address and the email address you had created. You provided your own work mobile phone number and a copy of Michael MacKenzie's marine licence, which falsely purported to be stamped and certified by Sergeant P. Brown of Wallan Police Station on 5 and 6 July 2017. You also provided false Bank of Queensland documents in the name of Michael MacKenzie. You transferred a $500 deposit to United Financial Services from your own Commonwealth Bank account. The loan was approved and paid into the account of Highway Performances Bikes (Charge 9).

42 On 13 July 2017, a vehicle courier collected the KTM 300 motorcycle from Highway Performance Bikes, and it was then picked up by you.

43 On 31 July 2017, police searched your Meadow Heights residence and located the KTM 300 motorcycle.

44 On 6 July 2017, you again contacted Jacob Mutton of MasterCraft Melbourne Boat Company and stated you were looking to buy a boat. Mr Mutton advised he would assist you but when you had the money and it had cleared his account. He referred you to 360 Finance.

45 You contacted Daniel Smith of 360 Finance and identified yourself as Michael MacKenzie. You made an application for finance in the amount of $100,000. You falsely provided your details as Michael MacKenzie, together with his address and the email address you had created. You used your own work mobile phone number. You also provided a copy of Michael MacKenzie's marine licence, false documents purporting to be an Australian Tax Office notice of assessment and a tax return from 2016 in the name of Michael MacKenzie (Charge 11).

46 Mr Mutton phoned Daniel Smith at 360 Finance and warned him about the legitimacy of “Michael MacKenzie”. The loan application was rejected.

47 On 4 July 2017, you contacted James Verheyen at Regal Marine by phone and identified yourself as Michael MacKenzie. You stated you were Brandon's father, that you wished to purchase a Malibu Wakesetter VLX boat and trailer for $104,500 and requested finance. You were referred to Mercury Finance. You told Mr Verheyen that you would have your son “Brandon” pick up the boat on 8 July 2017 (Charge 13).

48 You requested that Regal Marine obtain insurance for the boat. You provided your own bank details and post office box in Wallan. Regal Marine obtained insurance through Club Marine Insurance.

49 You contacted Trevor Hutchings at Mercury Finance and falsely provided your details as Michael MacKenzie of 21 Meridian Drive, South Moran together with his address and the email address you had created. You used your own mobile phone number. You also supplied a copy of Michael MacKenzie's marine licence, as well as a scanned copy of the Mercury Finance consumer loan contract falsely signed in the

name of Michael MacKenzie and purporting to be certified by Sergeant Peter Brown of Wallan Police Station on 7 July 2017 (Charge 12).

50 On 7 July 2017, you attended at Regal Marine stating you were there to pick up the Wakesetter for your father Michael MacKenzie. Staff member Trent Wardrop recognised you from a previous failed purchase. You were denied collection of the boat as the finance had not cleared and Michael MacKenzie had to sign the finance contract and registration of transfer.

51 You continued to unsuccessfully request that the boat be supplied and be transferred into the name of Brandon Scicluna.

52 On 10 July 2017, you contacted Mercury Finance as Michael MacKenzie and requested to cancel the transaction. You were told to contact Regal Marine. The sale did not go ahead.

53 On 31 July 2017, police searched your Meadow Heights residence and located the documents supplied to Mercury Finance.

54 On 10 July 2017, you contacted Seaview Ford in Western Australia and identified yourself as Michael MacKenzie. You agreed to purchase a 2016 Ford Ranger Wildtrak for $58,124.40. It was electronically signed an “Offer of Purchase”. You requested finance and were referred to St George Finance.

55 Allan Paul at Seaview Ford assisted you in making an online application with St George Finance. You falsely provided your details as Michael MacKenzie, together with his address, email address, a copy of his marine licence and a copy of his heavy vehicle licence. You used your own work mobile phone number. The application was submitted under the business name “Mick Mach Pty Ltd”. You signed the application as Michael MacKenzie. The application was approved by St George Finance and funds transferred to Seaview Ford (Charge 14).

56 The purchase of the Ford Ranger was processed. Mr Paul arranged for the Ranger to be delivered to your Wallan residence by a vehicle courier. However you then arranged your own vehicle courier to deliver the ranger to that address (Charge 15).

57 On 31 July 2017, police searched your Meadow Heights residence and located the Ford Ranger.

58 On 26 July 2017, David Henderson of Yamaha Motor Finance Australia received a referral purporting to be from Michael MacKenzie requesting $101,000 in finance to purchase a boat. Mr Henderson phoned you on your work mobile number and requested further information.

59 You provided Michael MacKenzie's marine licence details and a false Australian Tax Office notice of assessment in Mr MacKenzie's name. On 28 July 2017, the finance was pre-approved and applications forwarded to dealerships Port Phillip Boating Centre and DipTech Pty Ltd (Charge 16).

60 On 28 July 2017, you contacted Port Phillip Boating Centre and identified yourself as Michael MacKenzie. You requested to purchase a new Yamaha Outboard motor. Steven Schembri provided a quote of $19,885. You asked Mr Schemri to call your son “Brandon” about bringing the boat in. Mr Schembri spoke to you, this time as Brandon, and advised that without the boat the sale could not proceed. You said you did not have a car to tow it with (Charge 17).

61 You then spoke to Sofia Di Pietro of DipTech Pty Ltd about the purchase of a Yamaha personal watercraft for $24,480.81. You provided your details as Michael MacKenzie, together with his address. Mr DiPietro emailed an application form to your email address. You returned a Yamaha Motor Group Finance contract in the name of Michael MacKenzie, purporting to be signed by Mr MacKenzie, together with a copy of a marine licence and Australian Tax Office notice of assessment in Mr MacKenzie's name (Charge 18).

62 On 29 July 2017, Mr Henderson was notified of a possible fraud warning and the pre-approved finance was withdrawn and rejected.

63 All of the offences were committed while you were on bail and that is summary charge 23 – commit indictable offence on bail.

64 On 31 July 2017, you were arrested in the bungalow at the rear of the Meadow Heights property.

65 The search of the garage and premises located:

- two vials of testosterone (Charge 19 – possess drug of dependence);
- Ryobi tools (as had been reported stolen on 27 November 2016);
- documents in the name of Michael MacKenzie;
- documents and keys for the Holden GTS;
- Harley Davidson VROD motorcycle;
- a KTM motorcycle;
- a Ford Ranger;
- documents relating to various vehicle purchases;
- documents from Mercury Finance;
- cut certified copy stamp from Wallan Police Station; and
- two mobile phones used to contact various parties.

66 You participated in a recorded interview at Wallan Police Station on 31 July 2017. You made admissions to most of the deceptive conduct and of using the false identity of Michael MacKenzie. However you essentially stated that you were acting under duress from a guy you knew called Joe.

Objective seriousness of the offending

67 The offences of obtaining property by deception and of obtaining financial advantage by deception are serious offences which is reflected in the maximum penalty of 10 years imprisonment respectively. While the offences of attempting to obtain financial

advantage or property by deception attract a lower penalty of five years imprisonment they too in my view are serious offences as in this instance, they form part of a series of offences committed by you from November 2016 through to July 2017. Further, all of the offences represented on the indictment were committed while you were on bail.

68 Your offending over this period as detailed above, on the obtaining offences amounts to $498,000 and on the attempts to $728,000. The items that you sought to obtain and did obtain in some instances, were boats, motorcycles, and motor vehicles. I was told on the plea that all of the items that you did obtain were recovered when your property was searched by police.

69 It is difficult to understand the motivation behind your offending. On the one hand, if not for your complex psychological history and drug use, these offences may be viewed as being motivated by greed. On the other hand, you had at the time a serious drug addiction where on your own admission you were using drugs to the value of $600-800 per day yet the items that you did obtain were not quickly on sold in order to fuel that habit as may be expected. One view that was offered by your psychologist was an overriding desire fuelled by inadequacy to be viewed as ‘somebody’. I will return to this point later when dealing with your personal issues.

70 It was also submitted on your behalf that your offending was quite unsophisticated and that it was inevitable that you would be caught. This was put on the basis of your various cognitive deficiencies in combination with your serious drug addiction, which meant that you were not exercising proper judgement. Again I will return to this issue later in the sentencing remarks however as I noted on the plea, while there may have been an inevitability of detection, you did manage to commit the substantive offences by deceiving persons who worked in insurance companies and sales positions who would be alert to obvious attempts at deception. Ultimately as noted, the completed offences amounted to you retaining either property or financial advantage in the amount of approximately half a million dollars.

71 That said, the indictment contains a number of charges of attempt to obtain financial advantage or property by deception and as was put on the plea, those attempts failed because the potential victims recognised immediately how unsophisticated the offending was in those instances.

72 Further, you have had experience with this type of offending and thus were not a novice. Your criminal history records similar offending on a number of occasions in relatively recent times. In all the circumstances in my view, your offending represents serious examples of the offences of obtaining property and financial advantage by deception and attempting to obtain property and financial advantage by deception.

Personal circumstances

73 You are now 23 years of age and you were 22 at the time of the offending.

74 You grew up in the Meadow Heights area with your parents and two older sisters now aged 28 and 25 respectively. You attended the local primary school followed by high school at Penda Catholic School where because of your medical issues, including Attention Deficit Hyperactivity Disorder (ADHD) and Asperger's, which is part of a broader definition of Autism Spectrum Disorder (ASD), you were only able to complete year nine. You left school and attended the Kangan Institute where you received a certificate three in automotive painting and engineering.

75 You commenced work in the spray painting business in Craigieburn where you worked for four years. You then went to work for another panel beating business where you met a group of people who introduced you to drugs. You began to use ice and ultimately became involved in offending behaviour as reflected in your criminal history.

76 Specifically, as to your drug history you tried cannabis at the age of 15 however you did not continue as it made you feel sick. At age 18, you commenced taking speed which you used mostly on the weekends for about four months. At age 19, you were

introduced to methylamphetamine initially not using every day, however by the age of 20 you were using up to two grams of ice on a daily basis. Together with ice you used cocaine, on average about one gram per weekend.

77 You were arrested for these offences on 31 July 2017 however on 29 August 2017, you were sentenced in the Magistrates' Court in relation to other deception charges receiving a four-month term of imprisonment. Ultimately, you were in custody from the July arrest until December when you were bailed. While that time amounted to just over four months, because you were sentenced in relation to the other matters, you have only 29 days available to you that can be formally declared in relation to any sentence I impose.

78 Since being released on bail for the past 12 months you have engaged in intensive rehabilitation programs which were the focus of the plea and the matters put by Mr Melasecca who appeared on your behalf. One of the conditions of your bail is that you engage in treatment and counselling which you have done with Ms Amanda Brown of Lamberti Associates, rehabilitation consultants. Ms Brown gave evidence on the plea confirming the matters that she outlined in her report.

79 In summary, Ms Brown states that you have been successful in achieving drug free status for the 12 months that you have been on bail. I also accept that you did not use whilst in custody and thus you have approximately 16 months being drug free. Ms Brown states that you have been committed to attending counselling appointments on a weekly or fortnightly basis, together with the provision of urine screens. You have also attended Narcotics Anonymous meetings twice a week and have sustained weekly attendance of that group.

80 I also received a report from psychologist Luke Armstrong who assessed you and provided a report. Mr Armstrong also gave evidence before me at the plea. He provides a detailed history as to your diagnosis from age six with ADHD. Further at age nine, you were diagnosed with Asperger's condition. These conditions made it

very difficult for you to thrive in an academic environment and you were soon left behind by your peer group. You had great difficulty in taking directions from teachers and from your parents and had emotional outbursts including aggression towards your family members.

81 Mr Armstrong assessed you via various psychological tools and the findings are detailed in his report. In short your general cognitive ability is within the extremely low range of intellectual functioning. Your overall thinking and reasoning abilities exceed those of only one per cent of individuals of your age. Your verbal and non-verbal reasoning abilities are in the borderline range.

82 As to your academic achievements, Mr Armstrong applied testing which resulted in your reading being assessed in the very low range at grade four primary school level, your arithmetic at grade three primary school level and your spelling at grade two primary school level. While you left school at year eight level in his view, the testing suggested a far greater level of academic impoverishment. Mr Armstrong is also of the view that you have a limited understanding of risk in social situations, your social judgment is immature for your age and you are at risk of being manipulated by others.

83 Mr Armstrong is of the opinion that your impaired cognitive functioning and flawed personality needs to be considered together with your serious substance abuse problem, in order to assess your offending behaviour. He states that your various cognitive conditions such as ADHD and ASD alone create considerable functional impairment however when encountered together, that is in combination with your serious drug problem, your ability to exercise appropriate judgement is even further impaired.

84 Ultimately, Mr Armstrong concludes that you have a long and complex history of developmental disturbance which is evidenced by complex diagnoses including ADHD and ASD from the age of six. Mr Armstrong isolates your current IQ score as

more accurately reflecting the long-term crippling effects of your ADHD and ASD on your intellectual functioning rather than attributing that to drug use.

85 Mr Armstrong is also of the view that you do have insight into your offending behaviour and that you demonstrated to him that you appreciate the impact of your behaviour on your family and most particularly, your young son. It would seem that the four months you spent in custody was the catalyst in you realising the position you put yourself and your family in as a result of your poor choices. It was at that stage that you decided to cease using drugs and have continued drug-free since being released for a period of 12 months.

86 You have significant family support and a number of members of your family were present in court during the plea to support you. Your partner Amy Lee Himmerman gave evidence on the plea. She stated that you have been together for almost nine years and have had to face very challenging times as a result of the conditions you suffer. She witnessed your decline into drug use and unfortunately this occurred at the time when your son was born and while he was very young. She confirms the changes in you that have been documented in the various reports since your release. She said that you are hard-working and you have become a close and devoted father to your son.

87 Ms Himmerman's father also gave evidence on the plea. He states that you, your partner and your son have been living with his family since your release and he has no issue with you being there. He has taken on a role of being a mentor to you. He gave evidence that he will continue to support you in providing accommodation and ongoing support to you.

88 Evidence was also called from your employer Mr Johnny Abella. He confirms that you have been employed with his engineering firm since August last year. Mr Abella employs approximately 15 people and has daily contact with you at the workplace. He is well aware of your criminal charges and has had numerous conversations with

you about your offending behaviour. He views you as a valuable employee and will continue to employ you.

89 A further reference was tendered from the general manager of your employer, Ms Naomi Cooke. She explains your role as second in charge of the area you work within the factory. Ms Cooke notes that you have face to face contact with customers and that you handle that role with integrity and professionalism. She too notes that you have discussed with her your criminal charges and states that you are remorseful for the pain you have caused to your partner and family. Finally, she notes that the company will support you if you are required to undergo any community based sentence.

Sentencing considerations

90 Mr Melasecca outlined the matters in mitigation. First and foremost is your plea of guilty. It is accepted by the prosecution that your plea of guilty is a plea at the earliest opportunity which has of course, in cases such as this, saved a significant amount of court time and has facilitated the course of justice.

91 Over and above your plea of guilty it was submitted that you have demonstrated genuine remorse. Both Ms Brown and Mr Armstrong in their professional dealings with you, indicate that you have demonstrated sincere regret and remorse in relation to the pain that you have caused to your partner, your family and your wider family. I accept that through the course of your rehabilitation you have gained insight into your offending and have a greater understanding of the impact it has had on your immediate family and the wider community.

92 You are 22 years of age when you committed these offences and are now 23. You therefore fall to be sentenced as a youthful offender. Further, as noted above by Mr Armstrong as a result of testing, you function at a very low level. Therefore, although you do have prior convictions for similar offending, given the powerful mitigating material that has been presented on your behalf and the sustained rehabilitation in

the last 12 months, in my view your youth still should carry weight in the sentencing discretion and your rehabilitation remains as a prominent sentencing consideration.

93 Mr Melasecca submitted that your sustained period of rehabilitation should carry significant weight. You have remained drug-free as evidenced by urine testing for the 12 months that you have been on bail and I accept that you were drug-free for the four months you were in custody. You have engaged as required by your bail conditions with Ms Brown and have been entirely compliant with the treatment and rehabilitation that you have been offered by her. Further, you have been able to maintain full employment and it is clear from the evidence from your employer that you have become a contributing member of the community in that respect.

94 I take into account the difficulties you have suffered as a result of your cognitive impairments and I accept that *Verdins* principles do have application in this instance. Your various psychological disturbances on their own impair your ability to exercise appropriate judgement and thus I accept that your moral culpability is reduced because of those conditions. As was noted by Mr Armstrong, when those matters are combined with substance abuse, it only complicates further your cognitive functioning.

95 I also accept that if you are to complete a further period of time in custody that your impaired mental functioning which as noted, affects your judgement in social situations and makes you at risk of manipulation by others, will make any further time in custody more difficult for you.

96 As to your rehabilitation prospects, I assess them as strong. Without repeating the matters outlined in the various reports and the evidence that was presented on the plea, it is clear that you have indeed demonstrated a sustained period of rehabilitation. However while you may be drug free as noted by Mr Armstrong, because of your long-term and complex psychological history, you will need further

ongoing assistance and support to manage your condition within the context of your workplace, your family and your interpersonal relationships.

97 Mr Singh who appeared on behalf of the Director of Public Prosecutions accepted much of the matters in mitigation that were put on your behalf and submitted on behalf of the Director that given the powerful matters in mitigation, a combination sentence pursuant to s 44 of the *Sentencing Act* 1991 is an appropriate disposition. However, it was submitted that the seriousness of the offending calls for a further period of custody before you should be released on a community correction order.

98 As noted, while I accept that the *Verdins* principles apply and that therefore your moral culpability is reduced in relation to the offending, nonetheless general deterrence still must carry weight in the sentencing discretion. As to specific deterrence, I also accept that it too can be moderated as a result of your psychological conditions, however I note that despite the difficulties you have suffered you do have a significant number of prior matters in recent times for the same type of offending for which you received a term of imprisonment. Further, I also note that summary charge 23, commit indictable offence whilst on bail, is a rolled-up charge reflecting the fact that all of the offences on the indictment were committed while you were on bail.

99 In my view just punishment and denunciation of your conduct must also play a role in the sentencing discretion.

100 I also note that you fall to be sentenced as a continuing criminal enterprise offender in relation to charges 2, 7, 8, 14 and 15 on the indictment. That is so because you have been convicted of 12 prior offences of obtaining property by deception within the past three years. As such, in relation to those charges on the indictment, the maximum penalty is 20 years imprisonment. However Mr Singh submitted that the prosecution does not contend for a greater sentence as a result of that fact and in my view a differential sentence is not called for in all the circumstances.

101 After balancing all the relevant sentencing considerations, in all the circumstances a sentence pursuant to s 44 of the *Sentencing Act* 1991 is an appropriate disposition however in my view, the prison component of the order must include a further period of custody in order to meet the seriousness of the offending and the other applicable sentencing considerations.

Sentence

102 Mr Scicluna please stand.

103 Brandon Scicluna in relation to charges 2, 5, 8, 10 and 15, obtaining property by deception, you will be convicted and sentenced to 3 months imprisonment on each charge.

104 In relation to charges 4, 7, 9 and 14, obtaining financial advantage by deception, you will be convicted and sentenced to 3 months imprisonment on each charge.

105 In relation to charges 1, 3, 6, 11, 12 and 16, attempting to obtain a financial advantage by deception, you will be convicted and sentenced to 1 month imprisonment on each charge.

106 In relation to charges 13, 17 and 18, attempting to obtain property by deception, you will be convicted and sentenced to 1 month imprisonment on each charge.

107 In relation to charge 19, possession of a drug of dependence, you will be convicted and discharged.

108 In relation to summary charge 1, making a false report to police, you will be convicted and discharged.

109 In relation to summary charge 23, committing an indictable offence whilst on bail, you will be convicted and sentenced to 1 month imprisonment.

110 I direct that 1 month of the sentence on charges 5, 8, 10 and 15 be served cumulatively on each other and on charge 2. That makes your total effective sentence of 7 months imprisonment as the prison component of the sentence pursuant to s 44 of the *Sentencing Act* 1991.

111 Pursuant to s 18 of the *Sentencing Act* 1991, I declare that 29 days be reckoned as the period of imprisonment already served under the sentence I have imposed. That does not include today.

112 In addition to the prison component of the sentence, upon your release you will be placed on a community correction order with conviction for a period of two years. The community correction order will have punitive and therapeutic components.

113 You will be required to complete 250 hours community work and engage in programs to further address your drug use and assist you remaining drug free. You will also be subject to supervision.

114 Further, pursuant to s 48CA of the *Sentencing Act* 1991, I direct that all of the hours that you satisfactorily complete pursuant to the treatment and rehabilitation condition may be credited as hours of unpaid community work.

115 Pursuant to s 6AAA of the *Sentencing Act* 1991, I indicate that had you not pleaded guilty, I would have sentenced you to a period of 18 months imprisonment with a non-parole period of 12 months.

- - -